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Record No. 98-468

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

DUANE MONTGOMERY,

PETITIONER,

V.

CITY OF FARMINGTON HILLS; FARMINGTON HILLS POLICE DEPARTMENT,

RESPONDENTS.

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. The Petitioner's Response to Respondent's statement: THE APPELLATE COURT PROPERLY GRANTED A DISMISSAL BASED ON THE LACK OF JURISDICTION FOR THE REASON THAT THE PETITIONER DID NOT APPEAL FROM THE FINAL ORDER.

The Court must consider the transcript of the MOTION HEARING AND STATUS CONFERENCE held on January 14, 1998. The District Court issued the Opinion that ***"Well, the biggest problem I have is the police department is not an entity that can be sued"*** (see page A-7 of this Appendix). The District Court further states ***"You're not hearing what I'm saying. The police department can't be sued. It's not a case of taking a default. The police department doesn't exist as an entity. It's just a department of the city. Okay?*** (see page A-7 of this Appendix). The District Court Continues to states ***"So you can't sue city departments You sue the city, fair enough? So you can't go sue this department and than department, because they are not legal entities."*** (see page A-8 of this Appendix).

This Supreme Court must consider the clear and direct Opinion and Judgment of the District Court during the hearing held on January 14, 1998. A final judgment means the Judge hearing the case has made up his or her mind. Review of the transcript of the January 14, 1998, motion hearing shows that the District Court had made a decision regarding the liability of the Farmington Hills Police Department (FHPD).

The District Court also established the fact that the District Court will not allow any judgment against the Farmington Hills Police Department. The District Court did abuse its discretion in Ordering "Entry of Default To Be Set Aside". By granting the Farmington Hills Police Department motion, the District Court discretion was prejudicial to the Petitioner by allowing the Farmington Hills Police Department immunity from any violation of the United States Constitution

and prevents the Petitioner from seeking any further action or relief, against the Farmington Hills Police Department, Farmington Hills, Michigan Oakland County.

The Court of Appeals had jurisdiction over the subject matter of this appeal, because the Petitioner objected to the District Court determination of the liabilities of the FHPD, as authorized under Title 28 section 1292 of the Judiciary and Judicial Procedure.

II. The Petitioner's Response to Respondent's statement: THIS COURT SHOULD DENY THE PETITION BECAUSE THE TRIAL PROPERLY GRANTED THE MOTION TO SET ASIDE A DEFAULT.

The District Court used the FHPD's claim of non-entity status as cause for setting aside the default. This legal entity status targets the liabilities of the parties and the rights of the Petitioner to recover from the FHPD. Since the District Courts justified its order based on liabilities, the Court of Appeals had jurisdictions of appeal. Furthermore, the Petition for Writ of Certiorari has shown that the Court of Appeals have accepted similar appeals. The District Court has in effect dismissed the Farmington Hills Police Department as a party to this case for reasons that the Petitioner can not claim relief, then the District Court's actions must conform to Fed. R. Civ. P. 12(b)(6).

Under Rule 12(b)(6), "*the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56,..*" . Under Fed. R. Civ. P. 56(c), motions must be served at least ten (10) days before the time fixed for the hearing. Review of the record will show that the Defendants did not file the motion until January 5, 1998. The hearing was held on January 14, 1998. The Defendants failed to serve the motion at least ten (10) days before the hearing as required by Fed. R. Civ. P. 56(c). Michigan Law does allow actions to be brought against a governmental unit identified in its own name of Farmington Hills Police Department under M.C.L.A

600.2051(4). The matter of dismissing a party without regards to 42 U.S.C. $ 1983 or 1985 must be considered prejudicial against the Petitioner and thus fails to meet the requirements for setting aside a default under Fed. R. Civ. P. 55(c) or 60(b).

Also, the FHPD have failed to supply a meritorious defense to why the Petitioner was not allowed to take the required insulin. Furthermore, if the District Court Order setting aside default is not reversed, the Petitioner has no other method of challenging the Farmington Hills Police Department directly for the unconstitutional acts performed by the Farmington Hills Police Department.

Finally, the Supreme Court must consider the fact that the District Court (see page A-6 of Petition) relied on the Michigan Court of Appeals **McPherson v. Fitzpatrick, 63 Mich.App. 461, 464 (1975),** " *A municipal department, board, or commission, such as the Detroit Police Department, is unable to raise funds for payment...*" However, the Petitioner has shown on page A-112 of the Petition, and page A-30 of this Appendix, that the FHPD has raised funds on its own by applying for grant funds from the Department of Justice.

An impartial decision requires an equal opportunity to submit evidence in support of the Petitioner's claims. To make such statements at the hearing held on January 14, 1998, before any counter-evidence is reviewed, violated the District Court's oath of impartially discharging duties. Equal Rights to the poor and to those whom can not afford a lawyer must be enforced.

The District Court concluded before any evidence was submitted by the Petitioner, that the Police Department can not be held liable. This District Court's statement targets the liability of the respondent, Farmington Hills Police Department.

III. The Petitioner's Response to Respondent's statement:

THIS COURT SHOULD THE PETITION BECAUSE THE TRIAL COURT PROPERLY CONCLUDED THAT THE FARMINGTON HILLS POLICE DEPARTMENT IS NOT AN ENTITY SUBJECT TO SUIT AND SUMMARY JUDGMENT FOR THAT PARTY WAS PROPER.

Generations ago, an African American was considered property. For Generations, there were many laws on the books that enforced this country's illegal ideas. Just because a law exist, does not make it legal. This Petition for Writ Certiorari is the only conduit for identifying current laws which may continue to violate our American Freedoms. The Petitioner has shown that the McPherson v. Fitzpatrick case law is no longer valid for the FHPD. As such, the District Court reliance on such case law was an abuse of discretion.

IV. **The Petitioner's Response to Respondent's statement: THIS COURT SHOULD DENY THE PETITION BECAUSE THE TRIAL COURT PROPERLY CONCLUDED THAT NO CONSTITUTIONAL VIOLATION HAD OCCURRED AND THE PETITIONER'S ARREST WAS BASED ON PROBABLE CAUSE.**

The Respondents claim that the Petitioner's complaint neglected to specify any legislation such as 42 U.S.C. 1983 that permits him to proceed, is void of merit because the Petitioner's complaint is a pro se complaint. *Such complaints must be construed liberally, and held to "less stringent standards than formal pleadings drafted by lawyers."* **Haines v. Kerner**, 404 U.S. 519, 520 (1972). *"Allegations set forth by plaintiff in other documents are to be considered part of the complaint."* **Matzker v. Herr**, 748 F.2d 1142, 1148 n. 5 (7th Cir. 1984). Review of the Petitioner's Response to Defendants Motion for Summary Judgment (R. 67, Response by Plaintiff to motion for summary), outlines multiple charges

in U.S.C. 1983 and 1985. Thus, summary judgment for Defendants would NOT have been proper on that basis.

Petitioner's response to Respondents' claim that Petitioner failed to establish any unconstitutional policy.

The Petitioner's charged the Respondents for violation of the fourteenth amendment of the Constitution, 42 U.S.C.A. 1983, by enforcing M.C.L.A. 257.321(a). In support of this charge, the Petitioner submitted a complaint filed with the State of Michigan Department of Civil Rights by Perrion L. Robbins (page A-37 of Petition). This report shows that the Respondents have a policy of continual enforcement of M.C.L.A. 257.321(a) against African Americans traveling through the City of Farmington Hills. Furthermore on page 8 of the Brief in Opposition, the Respondents admitted to arresting the Petitioner for driving under a Suspended license under M.C.L.A. 257.321(a). However, this Court must consider the fact that M.C.L.A. 257.321(a) violates Due Process and that this Court must consider the fact that the opinion of the Michigan Attorney General which found that the "*Department of State alone has power to suspend and revoke a motor vehicle operator's license and can do so only for the reasons, conditions, and circumstances set forth in section M.C.L. 257.319, 257.321, and 257.321(b).* Op.Atty.Gen. 1970, No. 4454, p. 124. . The section 257.321(a) was NOT included in the Attorney General's opinion regarding laws that can be used to suspend a driver's license. The Respondents also states in the Brief of Opposition page 8, that "Petitioner was arrested for driving with a suspended Michigan driver's license and taken into custody. M.C.L. 257.904 ...". However this Court must consider the full text on page 8 which continues to state, "*A **person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified as provided in section 212** ...*". (see page A-29 of this Appendix). The Respondents have failed to produce any record of notification because the Petitioner was

NEVERED notified as required by M.C.L. 257.904. The Brief in Opposition on page 7 confirms that the Petitioner challenged the Michigan suspension at time of arrest and was entitled to a probable cause determination before the Petitioner was arrested and subjected to torturous cruel punishment by the Respondents (see **Murray S. Jacobson, Plaintiff, v. State of Illinois, Attorney General's Office, Criminal Division (Neil Hartigan, Attorney General), et al. , Defendants. No. 85 C 6480, United States District Court, N.D. Illinois, E.D.. Cite as: 1986 WL 4160 (N.D. Ill.)).** The Respondents' policy of enforcing M.C.L.A. 257.321(a) violates constitutional rights because of the Warrantless arrest base on information (**Richard E. Gerstein, State Attorney for Eleventh Judicial Circuit of Florida, Plaintiff-Appellant, v. Robert Pugh et al. No. 73** The arresting police officer Paul Nicholas stated on page A-75 and A-76 of the Petition, shows that the officer's statement proves that the Respondents performed a Warrantless arrest based on information which is unconstitutional (see page A-77 of Petition). The officer's statements also proves that the vehicle of the Petitioner was legally park in a private parking lot. The Respondents claim on page 22 of the Brief in Opposition reads " *alongside a public road*" as authorized under M.C.L. 257.252d. However, the Petitioner's vehicle was NOT alongside a public road. The Petitioner's vehicle was legally parked in a private parking lot not subject to the State Abandonment Statute. The seizure and search of the Petitioner's vehicle violated constitutional protection. Based on the statements of Officer Paul Nicholas, the Respondents have an established policy of enforcing M.C.L. 257.321(a). Furthermore, the Respondents' policy is in fact a Warrantless arrest based on information which has been established as unconstitutional.

Petitioner response to Respondents' claim that Probable Cause Supported Each Arrest.

The Respondents claim that the act of bounding the Petitioner over following a preliminary exam on charges arising out of the Petitioner's November 20, 1997 arrest proves that the officer acted with probable cause. However, the Respondents have failed to also disclose that the C.C.W. felony charge was dropped by the Oakland County Prosecutors Officer and/or Dismissed by the Oakland County Circuit Court and the State of Michigan has also failed to schedule a trial for the charge of Driving while License Suspended (People of the State of Michigan v Duane Montgomery case number 98-157635-FH before Honorable Jessica R. Cooper (248) 858-1000). The statement of Farmington Hills police (page A-34 of Petition) shows that the Petitioner was released only after family members were able to bring the Petitioner's C.C.W. permit to the Farmington Hills Police station. The action of holding the Petitioner and refusing the Petitioner's medical insulin until the Petitioner produced a C.C.W. permit shows that the continued detention and continued denial of medical insulin for the Petitioner was due to the arrest under the C.C.W. violation. However, as the transcript of Officer Paul Nicholas (see page A-63 of Petition), there was no probable cause to search the Petitioner's vehicle and thus there was no probable cause to arrest and detain the Petitioner on a C.C.W. violation. Officer Paul Nicholas stated that he searched the Petitioner's vehicle because the Officer was impounding the vehicle under M.C.L.A. 257.252(d). However, the Petitioner's vehicle was legally parked in a private parking lot. The impounding of the vehicle was unconstitutional because NONE of the conditions outline in M.C.L.A. 257.252(d) existed at the time of arrest. If the impoundment of the Petitioner's vehicle was unconstitutional then the search of the Petitioner's vehicle was also unconstitutional and also the arrest and detainment and deprivation of medical insulin, based on the results of the unconstitutional search, was also unconstitutional. The

Respondents have acknowledged that the Petitioner had a valid Ohio Drivers license.

This Court must consider the fact that the Petitioner has Never been convicted for driving in Michigan on a suspended Michigan license and that after one year after the arrest of the Petitioner for Driving While Suspended, the State of Michigan has failed to schedule a trial for the Petitioner due to the constitutional status of M.C.L.A. 257.321(a), (People of the State of Michigan v Duane Montgomery case number 98-157635-FH before Honorable Jessica R. Cooper (248) 858-1000, Oakland County Circuit Court). This Court must consider the fact that the arrest of the Petitioner on November 20, 1997 was a Warrantless arrest based on information. As shown in the Petition, a Warrantless arrest base on information is unconstitutional and thus the assault on the Petitioner does rise to the level of a constitutional violation.

The Respondents were "fishing" for any reason to stop and detain the Petitioner as part of the Respondents' ongoing unconstitutional policy of harassing African Americans as shown in the Respondents excessively high arrest rate among African Americans identified in the Petition. The fact that the Respondents did not have probable cause to stop the Petitioner is enforced by reviewing the statements of the two arresting officers, Officers Nicholas and Officer Newcomb, which is outline below.

The Initial Probable Cause Discrepancy

The incident which gave rise to this action between the Respondents and the Petitioner occurred on November 20, 1997 at the intersection of Orchard Lake Road and Thirteen Mile Road in the City of Farmington Hills. Within the City of Farmington Hills, Orchard Lake Road runs South to North and Thirteen Mile Road runs East to West. This Court must also realize that Officer Nicholas (senior arresting officer with three years on the job) and Officer Newcomb (junior arresting officer with 4 months on the job (Hire dates on page A-61 of Petition) were driving in **separate** vehicles heading

southbound on Orchard Lake Road. This is supported by reviewing of the Police Report of junior arresting Officer Newcomb (see A-26 of Petition). Officer Newcomb's report states that Officer Newcomb's vehicle was behind the Petitioner's vehicle. Officer Newcomb's report further states that senior arresting Officer Nicholas' vehicle was on the right side of the Petitioner's vehicle. Officer Newcomb's reports continues to state that the Petitioner was not observed until the Petitioner's vehicle, Officer Nicholas' vehicle and Officer Newcomb's vehicle were all stop at the intersection on Orchard Lake Road at 13 Mile Road.

Based on the fact that only junior arresting Officer Newcomb was behind the vehicle of the Petitioner, the only officer able to make a probable cause determination of whether the Petitioner's license plate was allegedly improperly displayed would be junior arresting Officer Newcomb. Now it is important for this Court to consider the testimony of senior arresting Officer Paul Nicholas in the transcript in the Appendix of the Petition, on page A-77. The parking lot of the small strip mall was located at the corner of 13 Mile Road and Orchard Lake Road, just a few feet from the intersection. The Petitioner's vehicle was pulled over in a matter of seconds from the point of first contact. This means that the Farmington Hills Police Officers did not follow or trail the Petitioner's vehicle for any measurable distance outside a few feet. Likewise, this means that the junior arresting Officer Newcomb must have made the probable cause determination while standing at the traffic light at the intersection. This allege act is also stated in the police report of the junior arresting Officer Newcomb. However, this is where the discrepancy starts. The junior arresting Officer Newcomb did Not make the probable cause determination. The probable cause determination was made by the senior arresting Officer Paul Nicholas. The police report of the senior arresting Officer Paul Nicholas, (see page A-18 of this Appendix), shows Officer Nicholas made the probable cause

determination and ordered the junior arresting Officer Newcomb to stop the Petitioner. However, this Court must consider the fact that the senior arresting Officer Paul Nicholas was not able to view the rear of the Petitioner's vehicle because Officer Nicholas vehicle was to the right of the Petitioner's vehicle. Furthermore, the Petitioner's vehicle Never past Officer Nicholas vehicle as stated in Officer Nicholas police report. Therefore, it was physically impossible for the senior arresting Officer Nicholas to view the license plate of the Petitioner's vehicle. The senior arresting Officer Nicholas could not legally make a probable cause determination without having a rear view of the Petitioner's vehicle. This discrepancy is an issue of great importance because probable cause must have existed before the Respondents stopped the Petitioner, and not created or discovered after the traffic stop was made. The Respondents have stated that the Respondents had probable cause to stop the Petitioner on November 20, 1997. However, the discrepancy of whether the senior arresting Officer Paul Nicholas made the probable cause determination without actually seeing the rear of the Petitioner's vehicle raises a genuine issue that this Court must consider.

CONCLUSION

The Petitioner, as shown on page A-33 in this Appendix, has exhausted all other measures to challenge Michigan M.C.L.A. 257.321(a). Wherefore, the Petitioner respectfully request that this Court Grant this Petition for Writ of Certiorari.

Respectfully,
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November 24, 1998
Date

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DUANE MONTGOMERY,
Plaintiff,

v Case No: 97-CV-75838-DT

CITY OF FARMINGTON HILLS and
FARMINGTON HILLS POLICE DEPARTMENT,

Defendant./

MOTION HEARING AND STATUS CONFERENCE
BEFORE THE HONORABLE PATRICK J. DUGGAN
United States District Judge
251 U.S. Courthouse
231 West Lafayette
Detroit, Michigan 48226

(January 14, 1998)

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None offered.

MONTGOMERY v. FARMINGTON HILLS

Detroit, Michigan
Wednesday, January 14, 1998
At 2:23 p.m.

- - -

COURT CLERK: This Court is now in session. You may be seated. Civil action number 97-75838, Duane Montgomery versus City of Farmington Hills, et al.

THE COURT: Identify yourselves for the record.

MR. MONTGOMERY: Sir, I'm the plaintiff, Duane Montgomery.....

THE COURT: All right.

MR. ROSATI: Your Honor, I'm Mike Rosati here for the defendants.

THE COURT: All right. We have a number of matters. Number one, we have defendant's motion to set aside a default judgment; is that correct?

MR. ROSATI: That's to set aside a default, Your Honor –

THE COURT: The default, rather, I'm sorry.

MR. ROSATI: Yes.

THE COURT: Do you want to address it?

MR. ROSATI: Briefly, Your Honor. When I received this file, I was told that the defendants were served on December 2nd. I filed an answer for both defendants, the City of Farmington and Farmington Hills Police Department in 20 days from that date, by the 22nd. I was informed after that that the Clerk had entered a default against the police department only, because the police department had been sent the complaint possibly five, six days earlier.

Immediately upon finding that out, I filed the motion to set aside the default, Your Honor, for the reasons set forth in that motion. In large part, because Farmington Hills Police Department doesn't exist as a legal entity. I would ask that you set aside the default.

THE COURT: Mr. Montgomery, any response?

MR. MONTGOMERY: Yes, Your Honor. The summons was served on November the 26th of '97. I filed a return of service on or abou December 5th. I also have the green return receipt when one of the officers there had signed for the document.

Also, Your Honor, the judgment was – I put in a request for default on December the 16th and it was entered on December the 18th. The defendant didn't file any of the motions until January 5th, which was like an expiration of 17 days.

THE COURT: **Well, the biggest problem I have is the police department is not an entity that can be sued.**

MR. MONTGOMERY: Your Honor, I have tried – I didn't bring the document with me to prepare, because I wasn't expecting it to be today. I have it down in my car with basically was going to be the justification why I think the default should not be set aside.

THE COURT: **I understand. But you can't sue the police department in the first place. So if you can't sue them in the first place, you can't take a default against them.**

MR. MONTGOMERY: But, Your Honor, it was within the Court's discretion to enter into the default –

THE COURT: **You're not hearing what I'm saying. The police department can't be sued. It's not a**

case of taking a default. The police department doesn't exist as an entity. It's just a department of the city. Okay?

MR. MONTGOMERY: Yes, sir.

THE COURT: **So you can't sue city departments You sue the city, fair enough? So you can't go sue this department and that department, because they are not legal entities.**

MR. MONTGOMERY: Your Honor, I'm prepared right now. I do have the information that I wanted to cite to the Court, but I thought I had to get it in writing to send it to the Court. And I wasn't aware that I would be responding to the motion –

THE COURT: That's fair. But how will the information you have relate to what I just said to you?

MR. MONTGOMERY: Okay. Your Honor, as I was going through the Federal Rules of Civil Procedure on doing the serve – I think it was – I'm not sure, but I got to check again, I wrote down. It's under Rule Nine that unless the defendant was challenging jurisdiction on the Court that I wouldn't have to prove that the defendant was actually able to be sued or do any suit or legal entity. I think it was under Rule Nine-something.

THE COURT: My point is, if it's something, you can't be sued, you get a judgment against, you can't do

anything with it. It doesn't exist. You have to get a judgment against the city in order to recover. **A judgment against the police department isn't worth the paper it's on, is my point.** It's not an entity, so you've accomplished nothing. You've got to get your judgment against the city in order to recover money. Do you understand what I'm saying?

MR. MONTGOMRY: I understand, Your Honor.

THE COURT: So the Court is going to grant – I will let you bring up more information if you want it, but I don't know that you're understanding what I'm saying.

MR. MONTGOMERY: I understand, Your Honor. I guess my argument is I want to at least present why I feel this subsection of government entity should be considered.

THE COURT: Fair enough. When do you want to present that?

MR. MONTGOMERY: I can present it within a couple hours or at your earliest convenience.

THE COURT: It's up to you. Okay. Then the Court will hold – if you want to submit it in writing, you can. Is that what you want to do?

MR. MONTGOMERY: Yes. Yes, Your Honor.

THE COURT: All right. I will allow you to submit the response in writing to that. Now, let's talk about the next

motions to quash the subpoena. Mr. Rosati, do you want to deal with that?

MR. ROSATI: To be honest with you, I'm not really prepared to deal with it. I rely on the brief we filed. The basis that we initially had to quash the subpoena was the fact they were not issued by a Court officer. Secondly, though, we believe that the subpoenas themselves are overly broad and unduly burdensome in that they require entities other than the defendants to respond with document requests which are absolutely and utterly voluminous and impossible to comply with.

THE COURT: All right. Mr. Montgomery, do you want to respond?

MR. MONTGOMERY: Yes, Your Honor. Information that was requested in the subpoena is important to the case to show that there are other witnesses that have been involved in the same type of instance that I have, and the only way to show that I've been treated differently than they normally have been treated is to actually compare people who were pulled over for the same instance that I was and see what was the ramifications of that on the individual.

THE COURT: Your subpoena, if it's validly issued, I don't know that it is, is too broad. You're asking for just an incredible amount of documents.

MR. MONTGOMERY: Your Honor—

THE COURT: You're on a fishing expedition, okay. So now, if you have some basis and want some specific records the discovery process allows for, but just to say, "Give me all the tickets you've ever issued and tell me who they were issued to and give me names and addresses, that's too broad. I would never allow it.

MR. MONTGOMERY: Okay, Your Honor. But the idea is there may be witnesses who have been through the same instance that I have with Farmington Hills Police, and the only way I can find that out is to at least have access to that information.

THE COURT: I'm not going to let you have the names and addresses of every person who ever received a ticket. It's just too broad.

MR. MONTGOMERY: Okay, Your Honor.

THE COURT: First of all, I think it may be involving their privacy.

MR. MONTGOMERY: Well, Your Honor, I would like to have any type of position of how can I get a limited – if the time frame is too large, but I need some basis to be able to identify people who may have had the problem with Farmington Hills Police. And the only ones who would have the information is the police department. And Your Honor, I

also want to compare as – I was pulled over and arrested for – they said, a valid driver's license. I had a valid driver's license and I'm looking to compare how many other people were pulled over for not having a valid driver's license and what were the consequences of that –

THE COURT: What would that show?

MR. MONTGOMERY: Well, Your Honor, I gave the officer a valid Ohio driver's license. In his report he wrote everything on the driver's license, except he put a Michigan driver's license number in there and claimed that I gave him a Michigan license, and I did not. I gave him an Ohio license and that was the whole contingent for them arresting me.

THE COURT: And I have no problem with you defending your case, but I don't know what all these other records will do to help your case. Your case was your case.

MR. MONTGOMERY: Yes, Your Honor. When I go to show a motive as to why I was picked on, the only way I'm going to be able to identify any common thread and is actually look at those cases and say, "Well, a percentage was treated this way and a percentage was treated that way."

THE COURT: What to you mean treated this way or that way? Treated how?

MR. MONTGOMERY: Well, Your Honor, my belief is that the treatment I received from the Farmington Hills was

based on some type of characteristic that I'm trying to investigate with that information.

THE COURT: But you're on a fishing expedition. I'm just not going to let you say, "Give me all the tickets. I want to find out whoever got tickets ..." it's just too broad. You've got to have some basis for it.

MR. MONTGOMERY: My point is that I can't access any of the infor -- if it's too broad, let the Court please tell me what can I ask for.

THE COURT: Can't you get a lawyer to represent you on this?

MR. MONTGOMERY: No, I can't afford a lawyer for this, Your Honor, and that's the reason why I filed—

THE COURT: When you say "afford a lawyer," many of these cases are taken on a contingent basis.

MR. MONTGOMERY: I understand, Your Honor.

THE COURT: So it doesn't cost you anything if the lawyer takes it on a contingent basis.

MR. MONTGOMERY: But, Your Honor, this type of case, with experienced counsel, this case could be drastic budget for way beyond my means. Even though you say that they take it on a contingent basis. I don't think I'll be able to just get any attorney to take a case like this.

THE COURT: The problem I have is, I can't give you legal advice as to how to conduct your case. And I'm concerned that you're not going to be conducting it in a proper manner, whereas if you get a lawyer to assist you, you may not run into those problems. And it would just seem to me that you ought to certainly try to get a lawyer to represent you, and he or she knows what they can request.

MR. MONTGOMERY: Okay, Your Honor.

THE COURT: The Court is going to enter an order to quash the subpoenas as issued. I'm going to suggest that you try and get a lawyer. If not, you're going to have sit down and engage in some reasonable discovery.

MR. MONTGOMERY: Okay, Your Honor. And one question, Your Honor?

THE COURT: Sure.

MR. MONTGOMERY: Were you still going to hold off on setting aside the default until I can get something in writing?

THE COURT: Sure. Absolutely.

Now, let's schedule the case. How much time do you feel you need for discovery?

MR. ROSATI: I think 90 days is fine, Your Honor.

MR. MONTGOMERY: Your Honor, I'm going to need more than 90 days, because the information I've

submitted to the Michigan Department of Civil Rights, they need eight to ten weeks to get the information available and I have to give copies to him and then we're going to need at least another four to five weeks to review that information.

THE COURT: What kind of information are you talking about from the Michigan Department of Civil Rights?

MR. MONTGOMERY: I asked for all complaints filed against the Farmington Hills Police Department.

THE COURT: And they said it would take how long?

MR. MONTGOMERY: Eight to ten weeks. And that's basically because they have a backlog and I have to wait my turn.

THE COURT: Well, all right. I'm going to suggest you get a lawyer. You can start doing some other discovery in the meantime, but - -

MR. MONTGOMERY: Yes, Your Honor.

THE COURT: All right. Discovery by May 31st. Complete discovery by May 31, '98. Exchange witnesses by April 30th. Do the two sides wish the case to go to mediation?

MR ROSATI: Your Honor, I haven't had a response from my client yet as to whether they want mediation or not.

MR. MONTGOMERY: Your Honor, I'm 100 percent towards ability of going to mediation.

MR. ROSATI: I can have an answer to you within a week, Your Honor.

THE COURT: All right. I'm going to ask you, Mr. Rosati to sign this. I'll have plaintiff sign it. We will hold it. You will send us a letter. You will indicate that your client consents, we'll proceed. If not, we'll set it aside and there will be no mediation.

MR. ROSATI: Thank you, Your Honor.

THE COURT: So you understand what's happening, Mr. Montgomery, Mr. Rosati is going to let us know in a week or so whether his client agrees to mediation. I'm going to set it for mediation now - -

MR. MONTGOMERY: Okay.

THE COURT: But if he says no, then I'm going to cancel it. Okay?

MR. MONTGOMERY: Yes, Your Honor.

THE COURT: So I'm going to order the mediation on May 15th. You won't get a mediation hearing until the end of June. You'll get a notice from the Court on all this, okay - - you'll get a notice on mediation. No motions after June 15. Pretrial, Marilyn?

COURT CLERK: August 12, 2:30.

THE COURT: Okay. We'll set the trial for the month of September, October of '98. Both sides will get a list of the cases for that term on August 1. You should be close to number one, because I have not set too many cases that far in advance. Okay?

MR. ROSATI: Thank you, Your Honor.

MR. MONTGOMERY: Thank you, Your Honor.

(Court in recess at 2:38 p.m.)

- - -

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Signed Marie Jedreski Metcalf 03/04/98
Marie Jedreski Metcalf, CSMR-3274

CITY OF FARMINGTON HILLS POLICE DEPT.
31655 W. Eleven Mile Road- Farmington Hills, MI 48338
Phone 474-8181 ORI # MI6338900

NARRATIVE REPORT PAGE 1 OF 2

DATE	DAY	SHIFT	PLATOON	BADGE#	YR	INCIDENT NO.
112097	THR	03	03	035& 052	97	32240

On Above Date Writer was s/b Orch. Lk. Near Firwood when listed veh. was obs. Also s/b Orch. Lk. Next to writer. Writer obs. veh's license plate was propped up in the rear window of the veh. The third brake light was blocking the view of the letters of the plate. Veh. and writer came to 13 mile red light. Veh. would not pull past writer but stayed even w/ writer's veh. leaving 2-3 car lengths between his veh. & veh. ahead. Writer obs. that OFC. Newcomb was behind the veh. & advised him via MDT to stop the veh. for above mentioned viol.

OFC. Newcomb made traffic stop, Orch. Lk. S. of 13 Mile. OFC Newcomb spoke w/ driver & obtained registration & the driver's Ohio OPS. Writer checked driver through LEIN/SOS. MI S.O.S showed him suspended numerous times. Driver, Montgomery, was taken into custody for DWLS. Writer searched Montgomery's veh. & founded listed .45 cal. Semi-auto. Loaded (1 round in chamber) wrapped in a rag under the driver's seat where Montgomery was sitting. Writer asked Montgomery if he had a CCW permit for the gun. He said he did but it was at home. Further search of veh.

by writer revealed listed high capacity cobray magazine in compartment behind rear seats, 2 additional loaded magazines for the .45 in a blk bag in the trunk as well as Glock handgun (loaded, empty chamber) in blk bag, in trunk. Writer Completed inventory & impounded veh.

signed P. Nicholas # 35

CITY OF FARMINGTON HILLS POLICE DEPT.
31655 W. Eleven Mile Road- Farmington Hills, MI 48338
Phone 474-8181 ORI # MI6338900

NARRATIVE REPORT PAGE 1 OF 2

DATE	DAY	SHIFT	PLATOON	BADGE#		YR	INCIDENT NO.
112097	THD	03	03	052		97	32240

OFFICER NEWCOMB AND OFFICER NICHOLAS WERE SOUTH BOUND ON ORCHARD LAKE RD. STOPPED AT 13 MILE RD. OFC. NEWCOMB WAS BEHIND THE SUSPECT AND NICHOLAS WAS TO THE RIGHT OF THE VEHICLE. OFC NEWCOMB NOTICED THE SUSPECTS LICENSE PLATE IMPROPERLY DISPLAYED IN THE REAR WINDOW. THE VIEW OF THE PLATE WAS ALSO BLOCKED BY THE 3RD TAILLIGHT. NICHOLAS RAN WHAT HE BELIEVED TO BE THE PLATE (3889 FJ) WHICH RETURNED NO RECORD. OFFICERS STOPPED THE SUSPECT ON ORCHARD SOUTH OF 13 MILE AND APPROACHED THE SUSPECT. SUSPECT (DUANE MONTGOMERY JR B/M 04-29-67) DEMANDED TO KNOW WHY HE WAS STOPPED. OFC NEWCOMB ADVISED MONTGOMERY HIS PLATE WAS IMPROPERLY DISPLAYED. MONTGOMERY PRODUCE HIS OHIO DRIVERS LICENSE AND VEHICLE REGISTRATION. OFC NEWCOMB RAN MONTGOMERY THROUGH LEIN/SOS AND MONTGOMERY RETURNED WITH 5 SUSPENSIONS WITH NO PRIORS. MONTGOMERY ADVISED OFFICERS THAT HE LIVES IN OHIO AND THOUGHT HE COULD DRIVE IN MICHIGAN IF HE OHIO OPERATOR LICENSE WAS VALID. MONTGOMERY WAS ASKED TO EXIT TO THE VEHICLE AND WAS ADVISED HE WAS UNDER ARREST FOR D.W.L.S. MONTGOMERY WAS SEARCHED INCIDENT TO ARREST AND WHEN ASKED IF HE HAD ANY WEAPONS ON HIM HE STATED "NO, NOT ON ME" MONTGOMERY WAS PLACED IN THE PATROL AND OFC NICHOLAS CONDUCTED A SEARCH OF THE SUSPECT'S VEHICLE. OFC NICHOLAS DISCOVERED A SEMI-AUTO HAND GUN LOCATED UNDER THE DRIVERS SEAT.

MONTGOMERY ADVISED HE HAS A C.C.W. PERMIT BUT DID NOT HAVE THE PERMIT WITH HIM. MONTOGMERY ADVISED HE WAS ARRESTED LAST YEAR FOR C.C.W.

SIGNED
INVESTIGATION OFFICER
NEWCOMB

CITY OF FARMINGTON HILLS POLICE DEPT.
31655 W. Eleven Mile Road- Farmington Hills, MI 48338
Phone 474-8181 ORI # MI6338900

NARRATIVE REPORT PAGE 2 OF 2

DATE	DAY	SHIFT	PLATOON	BADGE#	YR	INCIDENT NO.
112097	THD	03	03	052	97	32240

UPON LEAVING THE SCENE AND EN ROUTE TO THE STATION. MONTGOMERY ADVISED HE IS DIABETIC AND DID NOT TAKE HIS AFTERNOON INSULIN. UPON ARRIVAL AT THE STATION, PARAMEDIC WERE SENT TO THE STATION AND MONTGOMERY WAS TRANSFERRED TO BOTSFORD HOSIPTAL. MONTGOMERY CONDITION IMPROVED. OFC NICHOLAS FURTHER SEARCH REVEALED AN ADDITIONAL WEAPON (SEE OFC. NICHOLAS SUP. REPORT) OFC GOBLE WITH OFC NEWCOMB AT BOTSFORD HOSPITAL.

SIGNED
INVESTIGATION OFFICER
NEWCOMB

MI ST 257.255
M.C.L.A. 257.255

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 257. MOTOR VEHICLES
MICHIGAN VEHICLE CODE
CHAPTER II. ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE AND ANTI-THEFT
OFFENSES AGAINST REGISTRATION LAWS AND CANCELLATION OF REGISTRATION

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Current through P.A. 1998, No. 20

257.255. Motor vehicle registration; violation; penalty; international registration plan

Sec. 255. (1) Except as otherwise provided in this chapter, a person shall not operate, nor shall an owner knowingly permit to be operated, upon any highway, a vehicle required to be registered under this act unless there is attached to and displayed on the vehicle, as required by this chapter, a valid registration plate issued for the vehicle by the department for the current registration year. A registration plate shall not be required upon any wrecked or disabled vehicle, or vehicle destined for repair or junking, which is being transported or drawn upon a highway by a wrecker or a registered motor vehicle.

(2) Except as otherwise provided in this section, a person who violates subsection (1) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or by a fine of not more than $100.00, or both. However, if the vehicle is a commercial vehicle which is required to be

registered according to the schedule of elected gross vehicle weights under section 801(1)(k), [FN1] the fine which may be imposed shall not exceed $500.00.

(3) A person who operates a vehicle licensed under the international registration plan and does not have a valid registration due to nonpayment of the apportioned fee is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or by a fine of not more than $100.00, or both. In addition, a police officer may impound the vehicle until a valid registration is obtained. If the vehicle is impounded, the towing and storage costs of the vehicle, and the care or preservation of the load in the vehicle shall be the owner's responsibility. Vehicles impounded shall be subject to a lien in the amount of the apportioned fee and any fine and costs incurred under this subsection, subject to a valid lien of prior record. If the apportioned fee, fine, and costs are not paid within 90 days after impoundment, then following a hearing before the judge or magistrate who imposed the fine and costs, the judge or magistrate shall certify the unpaid judgment to the prosecuting attorney of the county in which the violation occurred. The prosecuting attorney shall enforce the lien by foreclosure sale in accordance with the procedure authorized by law for chattel mortgage foreclosures.

MI ST 257.904
M.C.L.A. 257.904

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 257. MOTOR VEHICLES
MICHIGAN VEHICLE CODE
CHAPTER VIII. PENALTIES

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Current through P.A. 1998, No. 20

257.904. Operator's or chauffeur's license or registration; suspension, revocation or denial; penalty for operation of vehicle; subsequent offenses; confiscation of plates; status and record of persons

Sec. 904. (1) A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked **and who has been notified as provided in section 212 [FN1] of that suspension or revocation**, whose application for license has been denied, or who has never applied for a license, shall not operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state. A person shall not knowingly permit a motor vehicle owned by the person to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never applied for a license, except as permitted under this act. A person who violates this subsection is guilty of a misdemeanor punishable

as follows:

(a) For a first violation, by imprisonment for not more than 90 days or a fine of not more than $500.00, or both. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be cancelled by the secretary of state upon notification by a court.

(b) For a second or subsequent violation , by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both. Unless the vehicle was stolen, the registration plates of the vehicle shall be cancelled by the secretary of state upon notification by a court.

(2) Upon receiving a record of a person's conviction for unlawful operation of a motor vehicle while the person's license is suspended or revoked or of a person's conviction or civil infraction determination for a moving violation of the vehicle laws of this state or a political subdivision of this state while the person's license is suspended or revoked, the secretary of state immediately shall extend the period of the first suspension or revocation for an additional like period. This subsection applies only if the violation occurs during a suspension of definite length or if the violation occurs before the person is approved for a license following a revocation.

(3) Upon receiving a record of the conviction, bond forfeiture, or a civil infraction determination of a person for unlawful operation of a motor vehicle requiring a class 1, class 2, or class 3 indorsement or vehicle group designation while the indorsement or designation is suspended pursuant to section 319a or 319b, [FN2] or revoked, the secretary of state immediately shall extend the period of suspension or revocation for an additional like period. This subsection

applies only if the violation occurs during a suspension of definite length, if the violation occurs before the person is approved for a license following a revocation, or if the person operates a commercial vehicle while disqualified under the commercial motor vehicle safety act of 1986, title XII of Public Law 99-570, 100 Stat. 3207-170.

(4) If the secretary of state receives records of more than 1 conviction or civil infraction determination resulting from the same incident, all of the convictions or civil infraction determinations shall be treated as a single violation for purposes of extending the period of suspension or revocation under subsection (2) or (3).

(5) Before a person is arraigned before a district court magistrate or judge on a charge of violating this section, the arresting officer shall obtain the person's driving record from the secretary of state and shall furnish the record to the court. The driving record of the person may be obtained from the secretary of state's computer information network.

(6) This section does not apply to a person who operates a vehicle solely for the purpose of protecting human life or property if the life or property is endangered and summoning prompt aid is essential.

(7) A person whose vehicle group designation is suspended or revoked and who has been notified as provided in section 212 of that suspension or revocation, or whose application for a vehicle group designation has been denied as provided in this act, or who has never applied for a vehicle group designation and who operates a commercial motor vehicle within this state, except as permitted under this act, while any of those conditions exist is guilty of a misdemeanor punishable, except as otherwise provided in this section, by imprisonment for not less than 3 days or more than 90 days

or a fine of not more than $100.00, or both.

MI ST 257.212
M.C.L.A. 257.212

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 257. MOTOR VEHICLES
MICHIGAN VEHICLE CODE
CHAPTER II. ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE AND ANTI-THEFT
IN GENERAL

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Current through P.A. 1998, No. 20

257.212. Notice; giving, mail, proof

Sec. 212. If the secretary of state is authorized or required to give notice under this act or other law regulating the operation of a vehicle, unless a different method of giving notice is otherwise expressly prescribed, notice shall be given either by personal delivery to the person to be notified or by deposit in the United States mail of the notice in an envelope with first class postage prepaid, addressed to the person at the address shown by the record of the secretary of state. The giving of notice by mail is complete upon the expiration of 5 days after the deposit of the notice. **Proof of the giving of notice in either manner may be made by the certificate of an officer or employee of the secretary of state or of a person 18 years of age or older, naming the person to whom notice was given and specifying the time, place, and manner of the giving of notice.**

U.S. Department of Justice
Civil Rights Division

Coordination and Review Section
P.O. Box 66560
Washington, DC 20035-6560

OCT 1, 1998

Mr. Duane Montgomery
1502 Harding
Detroit, Michigan 48214

RE: Complaint Number 171-37-0
Farmington Hills, Michigan Police Department

Dear Mr. Montgomery:

On July 1, 1998 the Coordination and Review Section (COR), Civil Rights Division, Department of Justice (DOJ) received your correspondence addressed to United States Senator, Spencer Abraham, alleging that officers of the Farmington Hills, Michigan Police Department (FHPD) have engaged in abuse of power, misconduct and racial discrimination. In particular, you contend that you were subjected to an unwarranted traffic stop, an illegal search and seizure of personal property, false arrest and were denied timely and appropriate medical care during your incarceration in the Farmington Hills Jail. In addition, you allege that the FHPD targets African American males for unwarranted traffic stops.

The Coordination and Review Section of the Civil Rights Division is responsible for coordinating the enforcement of Title VI of Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., and other civil rights statutes that relate to

programs and activities that receive Federal financial assistance. The Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789(c), prohibits discrimination on the basis of race, color, national origin, sex or religion by recipients of assistance granted under that act, including grants provided through the Department's Officer of Justice Programs and the Office of Community Oriented Policing Services. COR also investigates complaints against recipients of financial assistance from DOJ. The Department's recipients include police and sheriffs' departments, State departments of corrections, courts, and other entities.

We have determined that the FHPD receives financial assistance from DOJ. Therefore, the antidiscrimination provisions of the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. 3789d(c), apply. In addition, where there is a "pattern or practice" of police misconduct that violates the Constitution or federal law, the Department may file suit to obtain relief (42 U.S.C. §§ 14141, 3789d(c).

In order for us to determine whether we may proceed with an investigation of the issues you have raised in your complaint, we will need some additional information. Please fill out the enclosed Complaint Form and identify the incidents that have occurred. For each incident of alleged discrimination, please detail in writing the following: I) the date the incident occurred; ii) the names and phone numbers of all witnesses; iii) the names and phone numbers of any other victims you may be aware of who have been treated in this same discriminatory manner; iv) why you believe the police officers' actions were discriminatory; and, v) any other pertinent information which may aid us in the administrative review of your complaint. Please provide a phone number where you can be reached during business hours.

Your correspondence indicates that you have filed a

lawsuit involving these issues in Federal District Court. Please be aware that COR may elect to suspend any investigation of this matter pending the disposition of the court proceedings.

We have enclosed two copies of our Complainant Consent Release Form concerning the Freedom of Information Act and the Privacy Act. Please read it, sign it, and return one copy to my office at the address provided on the Form. You may retain the other copy for your records. If we do not receive your signed Complaint and Consent Form within 30 days of the date of this letter, we will close our files in regard to your case and notify you accordingly.

Please direct any written correspondence regarding this matter to Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66560, Washington, D.C., 20035-6560, and reference the complaint number cited above.

Sincerely,

signed Merrily A. Friedlander
Merrily A. Friedlander
Chief
Coordination and Review Section
Civil Rights Division

Enclosures

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DUANE MONTGOMERY, CASE NO.:98-CV-71530-DT
HON. PATRICK J. DUGGAN

Plaintiff,

vs.

PEOPLE OF THE
STATE OF MICHIGAN,
COUNTY OF OAKLAND,

Defendants.
_____/

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

At a session of said Court, held in the U.S. District Courthouse, City of Detroit, County of Wayne, State of Michigan, on May 11, 1998.

Plaintiff submitted this petition for writ of habeas corpus to the United States Court of Appeals for the Sixth Circuit. Since it was not a pleading that should properly be filed with the Court of Appeals, the Court of Appeals sent the case to be filed in the District Court.

This petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 was filed in this Court on April 8, 1998.

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides:

> The original petition shall be presented promptly to a judge of the district court in accordance with the procedure of the court for assignment of its business. The petition shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified.

The petition filed by petitioner is labeled, "Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody." Plaintiff is not "a person in state custody."

28 U.S.C. § 2254(a) permits, "an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the grounds that he is in custody in violation of the Constitution or laws or treaties of the United States."

Plaintiff's "petition for writ of habeas corpus" does not allege that he is a person in state custody (because in fact he is not), nor does it seek any relief to which a person may be entitled under § 2254.

This petition simply challenges the Court's ruling setting

aside a default judgment. Such relief is not available in a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. Therefore, since "it plainly appears from the face of the petition"... that the petitioner is not entitled to relief in the District Court,

IT IS ORDERED that the petition for writ of habeas corpus is hereby **DISMISSED**.

Stamped PATRICK DUGGAN
PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
Duane Montgomery
c/o ETR, Inc.
33523 Eight Mile Rd., Ste. 108, Bldg. A-3
Livonia, MI 48152

Arthur D'Hondt, A.A.G.
Michigan Attorney General's Office
Habeas Corpus Division, P.O. Box 30212
Lansing, MI 48909